

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #15	CCRB Case #: 202008197	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 12/10/2020 12:14 AM	Location of Incident: 2090 7th Avenue; 28th Precinct stationhouse	Precinct: 28	18 Mo. SOL 6/10/2022	EO SOL 6/10/2022	
Date/Time CV Reported Tue, 12/15/2020 9:51 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 12/15/2020 9:51 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Suthom Ungcharoen	26224	946349	028 PCT
2. LT Duvaughn Clacken	00000	941564	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brandon Robles	10514	962058	028 PCT
2. SGT Alex Chen	05043	954635	028 PCT
3. POM Alexander Lago	21997	952958	POL ACD

Officer(s)	Allegation	Investigator Recommendation
A.LT Duvaughn Clacken	Abuse: Lieutenant Duvaughn Clacken forcibly removed § 87(2)(b) to the hospital.	
B.POM Suthom Ungcharoen	Force: Police Officer Suthom Ungcharoen used physical force against § 87(2)(b)	

Case Summary

On December 15, 2020, § 87(2)(b) filed this complaint with the CCRB in-person.

At approximately 12:14 a.m. on December 10, 2020, § 87(2)(b) was arrested by Police Officer Brandon Robles of the 28th Precinct § 87(2)(b).

§ 87(2)(b) (Board Review #01). § 87(2)(b) was taken into custody and transported to the 28th Precinct stationhouse. At 1:25 a.m., he was transported to § 87(2)(b) to receive treatment for his asthma. He returned to the stationhouse at 3:35 a.m. At 4:10 a.m., Lieutenant Duvaughn Clacken, the 28th Precinct's desk officer, ordered several officers, including Police Officer Suthom Ungcharoen, to transport § 87(2)(b) to § 87(2)(b) (**Allegation A: Abuse of Authority – Forcible removal to the hospital**, § 87(2)(g)). While moving § 87(2)(b) out to a waiting ambulance, Police Officer Ungcharoen threw § 87(2)(b) against a wall (**Allegation B: Force – Physical force**, § 87(2)(g)).

Nine clips of BWC footage were obtained from this incident. They are attached in IA #22 and summarized in IA #32 (Board Review #02-03). No other video footage was found from this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Duvaughn Clacken forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) was interviewed by the CCRB on December 15, 2020. Police Officer Ungcharoen was interviewed at the CCRB on August 16, 2021. Lieutenant Clacken was interviewed at the CCRB on December 14, 2021. Police Officer Robles was interviewed at the CCRB on January 18, 2022.

It is undisputed that § 87(2)(b) was arrested at approximately 12:14 a.m. on December 10, 2020. He was transported to the 28th Precinct stationhouse. After his arrival, he was sent to the hospital at least one time. He was eventually transported to Manhattan Central Booking later that morning.

§ 87(2)(b) stated that when he first arrived at the stationhouse, he told Lieutenant Clacken, the desk officer, that he was having an asthma attack and needed to go to the hospital. Officers transported § 87(2)(b) to § 87(2)(b) where he was given an inhaler. The officers then returned § 87(2)(b) to the stationhouse. Later that night, Police Officer Ungcharoen told § 87(2)(b) that he was going to be fingerprinted. § 87(2)(b) refused to provide his fingerprints because he believed that the police had improperly arrested him. Police Officer Ungcharoen warned § 87(2)(b) that he would call an ambulance to the stationhouse if he did not comply. § 87(2)(b) asked why he was being hospitalized for a second time. Police Officer Ungcharoen told him that he would find out later. Police Officer Ungcharoen and several other officers then placed § 87(2)(b) in handcuffs and leg shackles and escorted him to the front desk. The officers then moved § 87(2)(b) to an ambulance waiting outside. The ambulance took him to § 87(2)(b) where he was admitted to the psychiatric ward. A doctor there interviewed § 87(2)(b) and then released him without administering further treatment.

Lieutenant Clacken stated that he worked as the desk officer while § 87(2)(b) was in custody at the stationhouse. From his position at the desk, Lieutenant Clacken was able to see into the stationhouse's holding cells via a CCTV monitor. He did not recall § 87(2)(b) being hospitalized

when he first arrived at the stationhouse, prior to his lodging in the holding cell. At some point later on in the night, Lieutenant Clacken heard § 87(2)(b) shouting inside the holding cell. He did not recall what § 87(2)(b) or if he was shouting at a particular person. He did not recall anybody else being in the holding cell area at the time. He did not recall § 87(2)(b) doing anything else besides shouting. He did not recall § 87(2)(b) refusing to be fingerprinted. Lieutenant Clacken suspected that § 87(2)(b) was emotionally disturbed because he was shouting. He therefore decided to have § 87(2)(b) transported to a hospital for psychiatric evaluation. No other factors besides the shouting contributed to this decision. Lieutenant Clacken did not know what hospital § 87(2)(b) went to.

Police Officer Ungcharoen stated that while § 87(2)(b) was being held at the stationhouse, he refused to allow Police Officer Robles to fingerprint him. Police Officer Ungcharoen did not recall any specific actions § 87(2)(b) took to prevent himself from being fingerprinted. § 87(2)(b) also complained that he needed medical treatment for his asthma. He also started kicking the bars of his holding cell and shouting threats. Police Officer Ungcharoen did not recall what § 87(2)(b) threatened to do or if there was a specific person he threatened. Police Officer Ungcharoen suspected that § 87(2)(b) was emotionally disturbed due to his “combative” behavior in the holding cell. Lieutenant Clacken decided to send § 87(2)(b) to the hospital for both his asthma and his emotionally disturbed behavior. Police Officer Ungcharoen stated that § 87(2)(b) was first transported to § 87(2)(b). From there, he was driven directly to § 87(2)(b). Police Officer Ungcharoen explained that § 87(2)(b) was moved because it is standard NYPD procedure for prisoners with psychiatric issues to be taken to § 87(2)(b). Police Officer Ungcharoen only recalled removing § 87(2)(b) from the hospital once. He indicated that the initial removal from the stationhouse to § 87(2)(b) took place at around 1:10 a.m., and that the transfer to § 87(2)(b) took place at around 4:20 a.m. He did not recall making separate trips to § 87(2)(b) and § 87(2)(b). He did not recall returning § 87(2)(b) to the stationhouse between the two hospitalizations.

Police Officer Robles stated that § 87(2)(b) was irate when he was first lodged in the holding cells after his arrest. § 87(2)(b) was shouting while in the holding cell. He did not recall what § 87(2)(b) said or who he was yelling at. Police Officer Robles lodged § 87(2)(b) in the cells but did not remain there. He went into another officer, located down a hallway about 100 feet away, to prepare paperwork. At around 4:00 a.m., Police Officer Robles re-entered the holding cells with other officers, including Police Officer Ungcharoen, to handcuff § 87(2)(b) and remove him to an ambulance. Police Officer Robles did not know why § 87(2)(b) was hospitalized or who made the decision to have him hospitalized. He did not recall suspecting that § 87(2)(b) was emotionally disturbed at the time. He did recall that § 87(2)(b) refused to be fingerprinted at some point earlier that night. He did not recall any other hospitalizations, including § 87(2)(b) being hospitalized for asthma immediately after his arrest.

The command log entry made for § 87(2)(b)'s arrest states that he first arrived at the stationhouse at 12:17 a.m. He was transported to § 87(2)(b) at 1:24 a.m. He returned to the stationhouse at 3:25 a.m. He was then taken to § 87(2)(b) for psychiatric evaluation at 4:10 a.m. (Board Review #04).

Police Officer Robles prepared two separate Medical Treatment of Prisoner Reports (MTPRs) for § 87(2)(b) (Board Review #05-06). The first report states that after § 87(2)(b) arrived at the 28th Precinct stationhouse, he complained that he had asthma and requested medical attention. He was transported to § 87(2)(b) for treatment. The second report states that while § 87(2)(b) was at the stationhouse, he became irate, kicked the door of a holding cell, screamed and refused to allow officers to fingerprint him. Lieutenant Clacken directed officers to remove § 87(2)(b).

§ 87(2)(b) to § 87(2)(b)

After reviewing the MTPRs, both Lieutenant Clacken and Police Officer Robles stated that they had no recollection of § 87(2)(b)'s initial hospitalization. Both officers also recalled that § 87(2)(b) § 87(2)(b) kicked the door of his holding cell. Lieutenant Clacken also recalled that § 87(2)(b) refused to be fingerprinted. He denied, however, that § 87(2)(b) was hospitalized because of this refusal.

BWC footage from the incident is attached in IA #22 (Board Review). The recordings cover § 87(2)(b) § 87(2)(b)'s arrest and his removal to § 87(2)(b) at 4:10 a.m. They do not depict his actions or behavior between his arrest and his removal to § 87(2)(b). The recordings do show that he was the only prisoner in his holding cell when he was sent to § 87(2)(b).

Based on the command log and the MTPRs, the investigation determined that § 87(2)(b) was hospitalized twice while in police custody. The first hospitalization, which took place shortly after his arrest, was for asthma treatment. The second hospitalization was for alleged emotional disturbance. The command log confirms that § 87(2)(b) was returned to the stationhouse between hospitalizations, rather than transferred between hospitals as Police Officer Ungcharoen described.

While it is undisputed that § 87(2)(b) refused to be fingerprinted prior to his removal to § 87(2)(b), there is no balance of testimony indicating whether he was shouting or kicking the holding cell door.

NYPD Patrol Guide procedure 221-13 defines an emotionally disturbed person as an individual who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. Once an emotionally disturbed person has been taken into police custody, officers are directed to call an ambulance to have them transported to a hospital for psychiatric evaluation (Board Review #07).

NYPD Patrol Guide procedure 208-11 states that when a prisoner refuses to be fingerprinted, a desk officer or supervisor from the command making the arrest should document the refusal on the prisoner's movement slip and in the command log and prepare a "refused prints report." It also directs that the prisoner be transported to the borough's Central Booking facility (Board Review #08).

NYPD Patrol Guide procedure 210-04 directs officers to request an ambulance and remove emotionally disturbed prisoners to the hospital when they attempt suicide, act in an extremely violent manner or exhibit irrational behavior (Board Review #09).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Force: Police Officer Suthom Ungcharoen used physical force against § 87(2)(b).

§ 87(2)(b) stated that when the officers informed him at the front desk that he was being taken out to an ambulance, he dropped his weight to the floor to prevent them from moving him. Police Officer Ungcharoen lifted § 87(2)(b) back up by pulling on his handcuffs. § 87(2)(b) initially stated that Police Officer Ungcharoen then “beat” him. When asked to clarify what he meant by this, § 87(2)(b) stated that Police Officer Ungcharoen dragged his body across the floor and struck the left side of his body against a wall. § 87(2)(b) initially stated that this impact caused him to start bleeding over his “whole body.” He later stated that he sustained lacerations to his feet and left shin and swelling to the left side of his head.

Police Officer Ungcharoen stated that after Lieutenant Clacken decided to have § 87(2)(b) hospitalized, he entered § 87(2)(b)'s holding cell and placed him in handcuffs and leg shackles. He tried to walk § 87(2)(b) to the ambulance outside. § 87(2)(b) refused to move, so Police Officer Ungcharoen pulled him along by his arm. He denied using any other force while moving § 87(2)(b). He denied that he or any other officers pushed § 87(2)(b) to the ground or against any surfaces, including walls. He did not recall § 87(2)(b) displaying or complaining of injuries at any time.

Lieutenant Clacken stated that after he decided to have § 87(2)(b) sent to the hospital, he instructed Police Officer Ungcharoen and several other officers to escort § 87(2)(b) to the front desk. The officers entered § 87(2)(b)'s cell and placed him in handcuffs. § 87(2)(b) initially refused to move. Police Officer Ungcharoen responded by pulling on his arm and guiding him to the front desk. When the ambulance arrived, Police Officer Ungcharoen escorted § 87(2)(b) out of the building. As they moved, § 87(2)(b) used a racial slur against Police Officer Ungcharoen, who is Asian. Lieutenant Clacken did not recall § 87(2)(b)'s exact words but believed that he called Police Officer Ungcharoen a “Chinaman.” He did not recall if Police Officer Ungcharoen reacted to the remark, but he denied that Police Officer Ungcharoen used any additional physical force in response. Lieutenant Clacken denied seeing Police Officer Ungcharoen or any other officer use further physical force against § 87(2)(b) beyond pulling his arm. He was not aware of § 87(2)(b) suffering injuries while being removed from the stationhouse.

Police Officer Robles stated that he assisted Police Officer Ungcharoen in escorting § 87(2)(b) out of his cell and moving him to the front desk. He did not recall them having any difficulty doing so. He did not recall what happened to § 87(2)(b) after he was presented at the desk. He did not recall any officers using physical force against § 87(2)(b) including pushing him against a wall or floor or striking him.

Police Officer Ungcharoen's BWC recording is attached in IA #22 (Board Review #02). It depicts

him and several other officers placing § 87(2)(b) in handcuffs and escorting him from the holding cell to the stationhouse's front desk. At 4:45 into the recording, Police Officer Ungcharoen takes § 87(2)(b) by his arm and walks him towards the stationhouse's front entrance. At 5:00 into the recording, § 87(2)(b) states, "Stop fighting, China." He then falls to the ground. It is unclear from the video whether he falls, drops himself, or is pushed down. § 87(2)(b) shouts, "Ah, my leg, my leg!" Police Officer Ungcharoen pulls § 87(2)(b) up by his arms. They move into a vestibule at the building's entrance. Police Officer Ungcharoen swings § 87(2)(b)'s body forward twice. At 5:07 into the recording, on the second swing, the left side of § 87(2)(b)'s body hits against a doorframe. § 87(2)(b) shouts, "My head, bro, my head! You just hit my head, bro!" Police Officer Ungcharoen then pulls § 87(2)(b) out the front door, to where an ambulance is parked. § 87(2)(b) asks the EMTs to examine his head. They do so but find no injuries. No injuries are observed on the video. No further physical struggle is seen on the video.

Police Officer Alexander Lago's BWC recording is also attached in IA #22 (Board Review #02). It shows him assisting Police Officer Ungcharoen in escorting § 87(2)(b) to the front desk and then walking him out of the building. At 4:50 into the recording, Police Officer Ungcharoen pulls § 87(2)(b) towards the vestibule by his right arm. § 87(2)(b) pulls away from him. § 87(2)(b) tells Police Officer Ungcharoen, "Stop playing me, China." Police Officer Ungcharoen then jerks § 87(2)(b) forward. § 87(2)(b) falls to the floor. He shouts, "Ah, my leg, my leg!" Police Officer Ungcharoen pulls § 87(2)(b) up by his arm. He then swings § 87(2)(b)'s body forward again, moving him into the vestibule. At 5:01 into the recording, § 87(2)(b) shouts, "My head, bro, my head!" At that moment, § 87(2)(b) is out of frame. The recording does not show what contact Police Officer Ungcharoen makes with § 87(2)(b) at that time. No further struggles are seen on the video. No injuries are seen on the video. No other officers use force against § 87(2)(b) besides Police Officer Ungcharoen.

Police Officer Ungcharoen was shown his BWC footage during his CCRB interview. After viewing the section at 5:00 into the recording, where § 87(2)(b)'s body is on the ground, he was asked how § 87(2)(b) came to be in that position. Police Officer Ungcharoen stated that § 87(2)(b) may have tripped. He denied pushing § 87(2)(b) down. The video was then played to 5:09 into the recording. When asked what happened during this section, Police Officer Ungcharoen stated that he was moving § 87(2)(b) outside. He denied that he pushed or held § 87(2)(b) against a wall.

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to place a person in custody or to prevent escape from custody. All applications of physical force must be reasonable under their circumstances. Factors to consider when determining if a specific use of force was reasonable include the actions taken by the subject, whether the subject is actively resisting custody, and the number of subjects in comparison to the number of officers present (Board Review #10).

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- [illegible]

Category	Value (approximate percentage)
1	100
2	85
3	95
4	90
5	100
6	100
7	20
8	95
9	100
10	95
11	95
12	100
13	15
14	100
15	90
16	15
17	100
18	100
19	100
20	30
21	95
22	60
23	100
24	95
25	40
26	100
27	100
28	100
29	100
30	100
31	100
32	100
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87	100
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89	100
90	100
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93	100
94	100
95	100
96	100
97	100
98	100
99	100
100	100

- Lieutenant Clacken has been a member of the service for fifteen years and has been named as a subject officer in one previous CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Ungcharoen has been a member of the service for fourteen years and has been named as a subject officer in four previous CCRB complaints and five allegations, one of which was substantiated.
 - 201702803 involved a substantiated allegation of refusal to provide name and/or shield number against Police Officer Ungcharoen. The Board recommended that he receive instructions. The NYPD imposed instructions.
 - § 87(2)(g)

- § 87(2)(b) s arrest during this incident (Board Review #12).

- § 87(2)(b) [Redacted]

Squad: 15

Investigator: Owen Godshall SI Owen Godshall 01/31/2022
Signature Print Title & Name Date

Squad Leader: *Simon Wang* IM Simon Wang 02/02/22
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date